

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1059 of 1995

WITH

CIVIL REVISION APPLICATION NOS.1060, 1061 & 1062 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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NIRMA LIMITED

Versus

ABOHAR PUNJAB TRANSPORT CO.  
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Appearance:

MR MB GANDHI for Petitioner

MR SUDHIR V SHAH for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/10/1999

COMMON ORAL JUDGEMENT

1. Heard the learned counsel for the petitioners.  
Opponents are absent though served. These are revisions under section 115, CPC at the instance of the original plaintiff who had filed a summary suit against the respondents-defendants under Order 37, CPC. The Summons

for Judgement was taken out by the plaintiff under the Ahmedabad City Civil Court Rules and particularly Rule 143, which was contested on merits by the defendants.

2. After hearing the parties the trial court appears to have adopted a peculiar procedure.

3. The trial court passed an order on 24th February 1995, wherein the first part i.e. the portion above the last paragraph deals with the contentions of the parties and grants conditional leave to defend to the defendants, specifying the amount to be deposited or paid. However, it also appears that thereafter, apparently on the same day, the very same Judge crossed out the date and his signature below the first part of the order, added another paragraph to the same order and signed and dated the same on the same day. Thus, the added paragraph which is now the last paragraph of the composite order sets at naught the logic and reasoning adopted in the first part of the order, takes a summersault and reaches a diametrically opposite conclusion to the effect that apparently there was no agreement between the plaintiff and the first defendant to pay interest at any rate and that the suit is outside the purview of a Summary Suit and therefore unconditional leave to defend be granted.

4. It would, therefore, appear that the second part of the order is diametrically contrary to the first part of the order. Paragraph 3 of the memo of the revision contains a specific assertion that the second part of the order was "without the knowledge of the parties or at least the present petitioner".

5. It would, therefore, appear that this procedure adopted by the trial court is clearly unorthodox and amounts to reviewing his order without there being any application for such review on record and without notice to the parties.

6. Such an unorthodox procedure adopted by the trial court is clearly a serious irregularity at best, and an illegal exercise of jurisdiction at its worst. The same requires to be quashed and set aside. Accordingly the impugned orders are quashed and set aside.

7. However, on the facts and circumstances of the case, and looking to the nature of the controversy between the parties, it is not for this court, while exercising jurisdiction under section 115 of CPC, to adjudicate upon the merits of the matter as to whether the defendant is entitled to conditional leave to defend

and/or unconditional leave. The trial court is, therefore, directed to hear and decide the Summons for judgement afresh in the light of the contentions taken in the leave to defendant applications and after hearing the parties. Since the suit is an old one, the trial court is directed to hear and decide the same as expeditiously as possible and preferably before 31st December 1999.

8. These revisions are accordingly allowed and rule is made absolute with no order as to costs.

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